

Pro-arbitration stance continues: Recent Hong Kong Court of Appeal rulings

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The Hong Kong Court of Appeal has recently handed down two decisions clarifying that award challenges cannot be used to avoid compliance with anti-suit injunctions or reopen ancillary issues in respect of a dispute already determined by the arbitral tribunal.

Highlights

In *RusChemAlliance LLC v Linde GmbH and Linde plc* [2026] HKCA 763, the plaintiff was in contempt of a Hong Kong anti-suit injunction (ASI) restraining foreign proceedings, and the defendant obtained a *Hadkinson* order preventing the plaintiff's application to set aside an HKIAC partial award from being substantively heard unless and until the plaintiff complied with the ASI. The Court of Appeal refused the plaintiff's applications for (i) leave to appeal against the *Hadkinson* order; and (ii) a stay of execution of the *Hadkinson* order pending appeal. In its judgment, the Court has clarified the following principles:-

- The court is not barred from making a *Hadkinson* order which has the effect of preventing an award challenge on the ground of bias/apparent bias from being advanced. There is no authority for the plaintiff's contentions that the court has a "positive duty" to set aside an award which is contrary to public policy or that such duty would override the Court's power to make a *Hadkinson* order. The Court noted that Article 34(2)(a) and (b) of the Model Law, which provides that the court "may" set aside an award on specified grounds, is permissive, not mandatory. Further, it was within the plaintiff's power to remedy its breaches of, and comply with, the ASI. For the same reasons, the Court considered meritless the plaintiff's complaint that the *Hadkinson* order went further than necessary to remedy the contempt and disproportionately impaired and restricted the plaintiff's constitutional right of access to court.
- Whether there is a sufficient nexus or connection between the contempt and the course of justice allegedly impeded by the contempt is only a factor (not a condition) to be considered in exercising the court's discretion to make a *Hadkinson* order. In any case, since the contempt and the set-aside application were both related to the arbitration, it was open to the judge to find that there was a sufficient nexus or connection. The judge was also entitled to take the view that the plaintiff's continued breaches of the ASI created prejudice to the defendants which impeded the course of justice from the standpoint of Hong Kong law.
- There is no principle that a *Hadkinson* order should not be made where the contempt preceded the order (or award) sought to be set aside on the ground of irregularity. Even if such a principle existed, it would have had no application in this case, as it was indisputable that the plaintiff continued to act in breach of the ASI after the partial award was made.

In *LY v HW* [2026] HKCA 936, the Court of Appeal affirmed the lower court's decision dismissing the plaintiff's *infra petita* challenge to an HKIAC arbitral award. The plaintiff argued that (i) the arbitral tribunal failed to deal with two key issues and give sufficient reasons for its award; and (ii) for the same reason, the award also contravened Hong Kong public policy. After considering the relevant parts of the award in detail, the Court held that:-

- The tribunal was "clearly alive" to the two issues, although it did not make any findings expressly in respect of those issues in the award.

- The two issues were not key issues which must be addressed by the tribunal.
- Therefore, the lack of detailed discussion by the tribunal in relation to those issues did not render its award susceptible to challenge, whether on the ground that the tribunal committed an egregious error or that the award was insufficiently reasoned and so contravened public policy.

Commentary

RusChemAlliance confirmed the court's power to make a *Hadkinson* order to give effect to an ASI in favour of arbitration, even where the arbitral award itself is being challenged and may eventually be set aside.

LY v HW serves as a reminder that the arbitral tribunal need not address in its award every single issue pleaded in the arbitration, and that the threshold for successfully challenging arbitral awards on *infra petita* grounds is high.

These decisions are consistent with, and reinforce, Hong Kong's long-standing pro-arbitration approach.

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